

The opinion in support of the decision being entered
today was not written for publication and
is not binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

MAILED

MAY 05 2005

U.S. PATENT AND TRADEMARK OFFICE
BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte RICHARD M. ANDERSON

Appeal No. 2005-0264
Application No. 09/139,298

HEARD: April 21, 2005

Before KIMLIN, WARREN and PAWLIKOWSKI, Administrative Patent
Judges.

KIMLIN, Administrative Patent Judge.

DECISION ON APPEAL

This is an appeal from the final rejection of claims 1, 4-8, 16, 18 and 19. Claims 12-14, the other claims remaining in the present application, stand withdrawn from consideration.

Claim 1 is illustrative of the subject matter on appeal and a copy of this claim is appended to this decision.

The examiner relies upon the following references as evidence of obviousness:

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Stern et al. (Stern) 5,054,059 Oct. 01, 1991

Stear, "A Handbook of Breadmaking Technology", Elsevier Science Publishing Co., Inc., NY (1990). Pages 210-213, 400-406, 523-524, 606. (Stear)

Litwak, "New Software Gives Operators More Dough", Supermarket Business, vol. 45, no. 6 (June 1990). Page 1A(3). (Litwak)

Muskal, "Making dough with the PC", PC Magazine, v3, p228(5), (February 7, 1984). (Muskal)

Appellant's claimed invention is directed to an automated process for producing a variety of baked food products. The process entails providing a machine having an electronic process control unit that can be electronically interfaced by a consumer for ordering a particular baked product from a list of a variety of products. The machine comprises the requisite plurality of storage devices for the raw ingredients, a dough making apparatus and a baking station. The machine is able to deliver a final baked product in response to an order from a consumer via a keyboard, an automated phone answering device or a modem of a remote computer.

Appealed claims 1, 4-8, 16, 18 and 19 stand rejected under 35 U.S.C. § 112, first paragraph, description requirement. The appealed claims also stand rejected under 35 U.S.C. § 103 as

being unpatentable over Litwak or Muskal in view of Stear and Stern.¹

Appellant groups together claims 1, 4-8, 16 and 18 and argues claim 19 separately (see page 3 of the principal brief). Accordingly, with the exception of claim 19, all of the appealed claims stand or fall together with claim 1.

We have thoroughly reviewed the respective positions advanced by appellant and the examiner. In so doing, we find that the examiner's rejection under § 112, first paragraph is not well-founded. However, we agree with the examiner that the claimed subject matter would have been obvious to one of ordinary skill in the art within the meaning of § 103 in view of the applied prior art. Accordingly, although we will not sustain the examiner's § 112 rejection, we will sustain the examiner's § 103 rejection.

We consider first, the examiner's rejection of the appealed claims under § 112, first paragraph. It is the examiner's position that the amendatory term "consumer", which replaced

¹The examiner's statement of the rejection at page 3 of the answer does not include the Stern patent. However, since the examiner's final rejection includes Stern, and appellant has responded to the rejection including Stern, we will treat the examiner's omission of Stern in the statement of the rejection as inadvertent, harmless error.

customer, does not have original descriptive support in the specification. The examiner states "[w]hile the specification clearly provides basis for the customer being the one who purchases the final baked product, it does not clearly imply that this is the same person who will consume, i.e., eat said product" (page 9 of answer, second paragraph).

While we agree with the examiner that the terms "customer" and "consumer" can have different meanings, we concur with the argument set forth in appellant's reply brief that the original specification reasonably conveys to one of ordinary skill in the art that appellant had in his possession, at the time of filling the present application, the concept of an automated process that interfaces with a consumer. The fact that the specification discloses that an order can be placed by a telephone or a home computer reasonably conveys that the claimed automated processes can be used by a consumer or a customer.

We now turn to the examiner's § 103 rejection. We agree with the examiner that Stear evidences that it was known in the art to employ computers to control automated baking processes wherein "[o]perations parameters are accessible via a 'menu'

series" (page 400, second paragraph). As noted by the examiner, Stear discloses that "[m]ore than 100 of these systems have been installed worldwide, some of which control not only the batching of ingredients but also the production line" (id.). Also, it would appear that appellant acknowledges at page 1 of the specification that automated baking apparatus were known in the art. It is appellant's contention that Stear is directed to the commercial baking of large-scale quantities of baked goods, and that "[n]one of the references singly or combined teach permitting the end user to directly enter an order into which produces a baked product from raw materials [sic]" (page 4 of principal brief, last paragraph). Appellant further maintains that "[n]one of the references are directed to the problem of delivering custom baked goods on demand at the point of delivery" (page 5 of principal brief, first paragraph).

At the outset, we find no patentable distinction between the claimed consumer who orders a particular baked product and an operator at a commercial bakery who inputs the data for a desired final product. Manifestly, such an operator can also be an ultimate consumer. Moreover, we take official notice of the fact

that it was well known at the time of filing the present application for remote consumers to order desired goods from their home telephones or computers, e.g., items from a grocery store or products from a retail store. As a result, we find nothing unobvious in utilizing the known technique for remotely ordering products to command the automated baking of a desired baked good. Also, we agree with the examiner that it would have been a matter of obviousness for one of ordinary skill in the art to scale down a computer-controlled, automated commercial bakery to a size that is amenable to a retail store. Inasmuch as the prior art establishes that a plethora of commercial bakery operations can be automated by a computer, such as inventory, bookkeeping, and baking itself, we find that it would have been obvious for one of ordinary skill in the art to automate the baking of a particular baked good by the ultimate consumer of the good. Also, we note that the "comprising" language of claim 1 "opens" the claim to include other machines in addition to the one recited in the claim.

As a final point, we note that appellant bases no argument upon objective evidence of nonobviousness, such as unexpected results, which would serve to rebut the prima facie case of obviousness established by the examiner.

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No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a)(1)(iv).

AFFIRMED

Edward Kimlin

EDWARD C. KIMLIN)
Administrative Patent Judge)

Charles F. Warren)
CHARLES F. WARREN)
Administrative Patent Judge)

Beverly A. Pawlikowski)
BEVERLY A. PAWLIKOWSKI)
Administrative Patent Judge)

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APPENDIX
Claim 1

1. An automated process for producing a range of grain based baked food products from a supply of raw materials comprising:

providing one machine at a desired location, said machine having (a) an electronic process control unit and (b) an electronic consumer interface (c) a housing, and (d) a customer delivery device, said machine containing a plurality of storage devices having raw ingredients, a dough making apparatus and a baking station, said consumer interface having one from a group comprised of a keyboard, an automated phone answering device, and a modem for connection to a remote computer for receiving an order from a consumer, said order including a quantity and a type of food product;

connecting said consumer interface electronically with said control unit;

storing a plurality of recipes for producing a plurality of baked food products in said process control unit;

receiving an order from a consumer and with said consumer interface;

directing said dough making apparatus with said process control unit to feed said raw ingredients from said plurality of storage devices into said dough making apparatus to mix the ingredients according to said order;

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controlling said dough making apparatus with
said process control unit to sequentially deliver
said mixture of ingredients to a baking station for
a predetermined time to produce a finished product;
and

delivering said finished product to said consumer
at said delivery station.